ENG KIAN SENG

v.

TAN SOON TONG

HIGH COURT MALAYA, JOHOR BAHRU
MOHD. YUSOF ABDUL RASHID J
[CIVIL APPEAL NO. 8 OF 1979]

CIVIL PROCEDURE: *Action for recovery of money purported to be an advance - Claim dismissed on the ground no such advance made - Appeal on findings of fact of trial President - Principles regulating duty of appellate Court to upset findings of fact.*

The appeal arose from a claim made by the appellant against the respondent for the recovery of a sum of RM5,000 purported to be an advance. The learned President was of the view that the appellant had failed to prove on the balance of probability that the respondent had received the advance of RM5,000 and dismissed the claim.

The appeal was based on the findings of fact of the learned President regarding the rejection of the evidence of the witnesses for the appellant. No question of law was involved in this appeal and the criticisms were directed at the judgment of the learned President who had based her judgment on the conclusion she had formed as to which of the witnesses, whom she had seen and heard, were trustworthy and which were not. The appellate Court was urged to interfere with the learned President's findings of fact and to differ from the said decision.

Briefly the facts were:

On an application for the alienation of 3 pieces of land being approved to the respondent, his mother and brother they were required to pay a total sum of RM5,098.40 as premium. Wishing to make a profit out of the lands the respondent decided to sell them. The appellant was introduced as a prospective buyer and a sale agreement was executed with the payment of RM700 as deposit. To enable the premium of RM5,098.40 to be paid on the lands, the respondent had asked the appellant to advance him a sum of RM5,000. It was that RM5,000 which was in dispute in Court because the appellant alleged that he had so advanced the money but the respondent contended that though the RM5,000 was promised, it was never paid to him.

The issue before the Court, as determined by the learned President, was whether the premium paid by the respondent at the Land Office, Pontian on 25 October 1972 was his own money or money (RM5,000) that had been advanced to him by the appellant.

Held:

[1] There is certainly jurisdiction in the appellate Court to reconsider the facts and come to an opposite conclusion from that arrived at in the Court below. The learned President is not the possessor of infallibility and like other tribunals, there may be occasions when the learned President goes wrong on a question of fact. But the learned President had the great advantage, which is denied to an appellate Court, of seeing the witnesses and watching their demeanour.

[2] In this case, where there were contradictions on questions of fact between the witnesses for the appellant and the respondent, a presiding President was clearly in a better position than an appellate Court to judge where the truth lay. An appellate Court can upset the conclusion arrived at by the trial Judge only if satisfied that the learned President was plainly wrong in her conclusion.

[3] The learned President had committed no error of law, nor had she failed to consider all matters demanding consideration nor acted on any wrong principle and accordingly the appeal is dismissed.

[Appeal dismissed with costs.]

For the appellant/plaintiff - Tan Kiah Teck
For the respondent/defendant - T.S. Chong

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Also found at [1982] CLJ 316